

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WINERIES OF THE OLD MISSION
PENINSULA ASSOC (WOMP), a Michigan
nonprofit corporation; BOWERS HARBOR
VINEYARD & WINERY, INC, a Michigan
corporation; BRY'S WINERY, LC, a Michigan
corporation; CHATEAU GRAND TRAVERSE,
LTD, a Michigan corporation; CHATEAU
OPERATIONS, LTD, a Michigan corporation;
GRAPE HARBOR, INC, a Michigan corporation;
MONTAGUE DEVELOPMENT, LLC, a
Michigan limited liability company; OV THE
FARM, LLC; a Michigan limited liability
company; TABONE VINEYARDS, LLC, a
Michigan limited liability company; TWO LADS,
LLC, a Michigan limited liability company;
VILLA MARI LLC, a Michigan limited liability
company; WINERY AT BLACK STAR FARMS,
LLC, a Michigan limited liability company,

Plaintiffs,

v

PENINSULA TOWNSHIP, a Michigan municipal
corporation,

Defendant,

and

PROTECT THE PENINSULA, INC.,

Intervenor-Defendant.

Case No. 1:20-cv-01008

HON. PAUL L. MALONEY
MAG. JUDGE RAY S. KENT

**NOTICE TO CLARIFY RESPONSE TO
QUESTION AT ORAL ARGUMENT
REGARDING PTP MOTION TO DISMISS
ECF 250**

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**NOTICE TO CLARIFY RESPONSE TO QUESTION
AT ORAL ARGUMENT REGARDING PTP MOTION TO DISMISS ECF 250**

Intervener Protect the Peninsula, Inc. (PTP) files this notice to clarify a response to a question provided by Undersigned Counsel Tracy Jane (TJ) Andrews at the hearing held November 17, 2022, before Honorable Judge Maloney. The transcript of the hearing is not yet available, so this motion is based on Counsel's after-the-fact recollection and interpretation of one exchange over the course of several hearings.

In the hearing on PTP's Motion to Dismiss Plaintiffs' State Law Claims (ECF No. 250),

Judge Maloney posed a question regarding Counsel's position whether Plaintiffs Wineries of Old Mission Assoc. (Wineries) have stated claims upon which relief can be granted under Fed. R. Civ. P. 12(b)(6). In response, Counsel believes she agreed that the Wineries have stated claims alleging conflict preemption. Counsel interpreted the question as inquiring whether Plaintiffs' preemption claims in their First Amended Complaint satisfy federal pleading standards in Rule 12(b)(6).

PTP did not interpret the Court's question to be inquiring whether PTP agrees the Wineries have stated *valid* or *meritorious* claims under their conflict preemption theory. However, to the extent there is any ambiguity, PTP clarifies its position. PTP maintains that Plaintiffs' preemption claims must fail as a matter of law on the merits for the reasons discussed in briefing and at the hearing. ECF No. 250, PageID.8932-8948; ECF No. 273, PageID.9947-9956. When PTP first drafted its motion (April 2021, ECF No. 56-1) and continuing still, there were no apparent factual matters to be developed related to these legal claims. PTP cited Rule 12(b)(6) as a basis for the Court to dismiss the state claims on their merits (as opposed to Rule 12(b)(1) for lack of subject matter jurisdiction, PTP's alternative theory supporting dismissal). PTP might instead have cited Rule 12(c) for judgment on the pleadings,¹ or Rule 56 for summary judgment.² Regardless of which rule fits, PTP maintains the Wineries' state law claims should be dismissed, rejected, denied, or otherwise disposed of because they are contrary to and unsupported by Michigan law, as briefed and argued. Undersigned Counsel clarifies that the response to the Court's inquiry was in no way intended to waive (or concede or otherwise abandon) our firm position that the Wineries' state law claims are ripe for dismissal because they are meritless.

¹ At the time the motion was originally filed, PTP's motion to intervene and proposed answer and affirmative defenses had not been granted, so pleadings were not yet closed. Fed. R. Civ. P. 12(c).

² The Court addressed the merits of the Wineries' state law claims under Rule 56 in its Order Regarding Summary Judgment Motions (ECF No. 162).

Respectfully submitted,

Date: November 18, 2022

By: _____
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Date: November 18, 2022

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CERTIFICATE OF SERVICE

I, Tracy Jane Andrews, hereby certify that on the 18th day of November, 2022, I electronically filed the foregoing document with the ECF system which will send a notification of such to all parties of record.

By: _____
Tracy Jane Andrews (P67467)